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NO. 91-1781

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1991

STATE OF ALABAMA,

PETITIONER,

V.

SYLVESTER BROOKS,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND COURT
OF CRIMINAL APPEALS OF ALABAMA

PETITIONER'S REPLY TO THE BRIEF IN OPPOSITION TO THE PETITION

OF

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SUMMARY OF THE REPLY ARGUMENT

The Alabama Appellate Courts reversed the Respondent's conviction, not because of a lack of probable cause, but because of an allegedly insufficient description of the Respondent in the search warrant.

Given the practical importance of the question presented by the petition, the amount

of litigation the issue has and is generating, the sharp split among the states, and the important constitutional rights which are at risk in one or the other group of States, this issue is of extreme importance.

REPLY ARGUMENT

In this case the warrant magistrate found that probable cause existed as to "John and Bo's Fish Supreme, and any other persons therein" (Brooks v. State 593 So.2d 97, 98 [Ala.Cr.App, 1991]; cert. den; appendix to the petition, page 6) One of the "persons therein", Michael Perry, was identified at the time of the warrant and was named in the warrant. (Ibid.) The Court of Criminal Appeals approved the search of the Fish Supreme and of Michael Perry and so noted in the opinion in this case Brooks v. State, above, at 98; App. at 4. The only difference between Michael Perry and the Respondent is that Perry was identified and named in the warrant, while this Respondent was not known and not named. Perry's conviction was affirmed (Perry v. State 586 So.2d 307, 3rd case, [Ala.Cr.App, 1991]); this Respondents conviction was reversed. The reason for this, as stated in the opinion of the Court of

Criminal Appeals, is a presumed absolute bar by the Fourth Amendment on warrants for persons who can be identified only by their presence at the place ordered searched. Brooks v. State, above, at 593 So.2d 99, App. pp. 8-10. See also Helms v. State 549 So.2d 598, 601 (Ala.Cr.App, 1989); cert. den; U.S. cert. den. 493 U.S. 1022, 107 L.Ed.2d 744, 110 S.Ct. 725 (1990), quoted in Brooks v. State, above, at 593 So.2d 99; App. pp. 8-10. This is the issue decided by the Alabama Appellate Courts, and this is question presented by the petition.

The Respondent claims that the issue presented is whether there was probable cause for the search of the Respondents. Since the Alabama Courts upheld the search of Michael Perry, who was named in the warrant, it seems obvious that, if the Respondent's identify had been known and if he had been named in the warrant, the warrant would have been upheld as to him as well. What was missing according to

the Court of Criminal Appeals was an adequate description of the Respondent, not probable cause.

Base on his misapprehension of the issue, the Respondent says that the issue presented here is not important. However, the issue actually presented, as we set it out in the petition is important for at least four reasons:

1. It relates to a common situation which comes before the courts every day.

2. The question has generated and is continuing to generate large amounts of litigation, considering the numerous appellate opinions on the subject.

3. There is a sharp slit among the states on this issue.

4. If States like Alabama and Oregon (State v. Ingram 313 Or. 139, __ Psd __, 1992 W.L. 82118 [Or.] [1992]; supplement to the petition.) are correct, then the many states which allow persons present warrants are

regularly violating people's Fourth Amendment rights, by allowing searches under such warrants. If, however, Alabama and Oregon are wrong in holding that such warrants are void, then, in placing persons who cannot be identified at the time the warrant is issued beyond the protection of the warrant process, these states are in patent violation of the Fourth Amendment.

It is obvious that this is a question which must be resolved, and we submit that the instant case an excellent opportunity to examine the issue and resolve it.

CONCLUSION

In conclusion your Petitioner, the State of Alabama, again respectfully submits that in this case the Court of Criminal Appeals and Supreme Court of Alabama, decided an important novel question under the Fourth Amendment in a manner which conflicts sharply with the decisions of other state appellate courts on the same issue. In addition, the

policies established and followed by the Alabama appellate courts are contrary to the policies established by the Fourth Amendment as recognized by this Court.

Therefore, Your Petitioner again prays that this Honorable Court will issue a writ of certiorari and will review the matters complained of and reverse the decisions of the said appellate courts of Alabama.

Respectfully submitted,

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BY:

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